



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, 17 जनवरी, 1984/27 पौष, 1905

हिमाचल प्रदेश सरकार

LABOUR DEPARTMENT

NOTIFICATION

Shimla-2, the 26th December, 1983

No. 2-8/83-Lab.(Dep.).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to publish the award of the H.P. Labour Court, Shimla-2 as under:—

**BEFORE THE PRESIDING OFFICER, LABOUR COURT, HIMACHAL PRADESH
SHIMLA-2**

CASE NO. 46/79

Shri Nek Ram

... Petitioner.

Versus

Management, Himachal Road Transport Corporation, Mandi

... Respondent.

PRESENT: Shri P. S. Dogra A.R. of the Petitioner.

Shri Tek Chand, Assistant, Office of the Assistant Manager, Sarkaghat on behalf of Respondent.

AWARD

Nek Ram is a conductor with the Himachal Road Transport Corporation, Respondent Management. His services were terminated by the Respondent Management. A reference has been made to this Court *vide* notification No. 10-12/74-SI, dated the 22nd September, 1979. Shri Nek Ram, filed his claim petition which was resisted by the Respondent Management. Issues have been framed and evidences have also been recorded.

This case was fixed for arguments on 13-11-1983. The parties informed me to settle their dispute out of Court. This case was taken up to-day. The parties have arrived at a settlement. Shri Nek Ram has given up the claim for back wages. The Respondent Management has agreed to take him back and give him all the service benefits to which he is entitled to had he been in service continuously and his services were not terminated by the impugned order of Respondent Management. I have recorded the statements of Nek Ram, Petitioner and Tek Chand, Assistant posted in the office of the Assistant Manager, Sarkaghat.

I am satisfied that the parties have arrived at a lawful settlement. In view of the statement made by the petitioner and authorised Representative of the respondent, I award that termination of services of the petitioner by the Respondent Management is not justified. This order is liable to be quashed and is hereby quashed. The petitioner will not claim any back wages from the Respondent Management. He will report for duty as a conductor immediately at the place where he was working at the time of termination of services. The Respondent Management will employ him on the date he reports for duty. In case this takes some time to employ the petitioner on the job, the petitioner will be entitled to get his wages from the date he reports for duty.

The petitioner is entitled to all the service benefits as if his services had not been terminated. He will be entitled to regular increments during the period he remained out of job for the purpose of fixation of his pay. His services will also be taken into consideration for the purpose of regularisation. He is entitled to his place of seniority qua his other employees as if his services had not been terminated. He will get all other service benefits as if he is in continuous service during all this period after the termination of his services.

As Nek Ram petitioner is entitled to join service immediately, the copy of this award be supplied to both the parties free of costs so that this award may be implemented without awaiting for its being published in the H.P. Rajpatra. The parties are left to bear their own costs of these proceedings.

ANNOUNCED:
20-11-1983.

S. S. KANWAR,
Presiding Officer,
Labour Court,
Himachal Pradesh.
20-11-1983.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, HIMACHAL PRADESH
SHIMLA-171002

Case No. 1 of 1981

Bachan Singh

Versus

Management of H.R.T.C., Parwanoo

.. Petitioner.

.. Respondent.

PRESENT: Shri Tajinder Singh, A.R. of the Petitioner.
Shri Nanak Ram on behalf of the Respondent.

AWARD

Shri Bachan Singh was employed as a Driver by the Himachal Road Transport Corporation on muster-roll/daily wages on 24-2-1973 in Dhalli Region. The Himachal Road Transport Corporation re-organised itself and an independent region at Parwanoo was established. Bachan Singh was transferred from Dhalli Region to Parwanoo Region where he started functioning as Driver. The Bus which he was driving met with an accident on 2-8-1974. The services of Bachan Singh were terminated on this account with effect from 3-8-1974. Bachan Singh was punished for offences under the provisions of section 279/337 I.P.C., and was convicted by the Judicial Magistrate. He went in appeal and the appeal was accepted by the learned Sessions Judge, Solan and Sirmour and he was acquitted *vide* judgement dated 23-11-1978.

Bachan Singh had not been allowed to work although he reported for duty on 3-8-1974. The Headmechanic told him that he will not be taken back on duty till he is exonerated.

After acquittal of Bachan Singh, on 23-11-1978, Bachan Singh submitted his representation on 5-1-1979 praying for the permission to allow him to join duties on 28-3-1980. He also submitted representations subsequently but to no effect. The management did not take him back in service.

Bachan Singh has now raised an industrial dispute and the same has been referred to this Court *vide* notification No. 8-15/80-Shram, dated 6th January, 1981. The following question has been referred for adjudication to this court:—

“Whether the termination of services of Shri Bachan Singh, Driver by Regional Manager, Himachal Pradesh Road Transport Corporation, Parwanoo, is justified and in order? If not, to what relief and exact amount of compensation Shri Bachan Singh is entitled to?”

Notices of this reference were given to both the parties. They have appeared and filed their claim petitions. Bachan Singh, petitioner has stated that he joined service of the management on 24-2-1973 as a Driver at Dhalli Region and later on transferred to Parwanoo Region on 1-1-1974. Thus the services have been terminated after put in 248 days service and that no notice was given to him nor any enquiry has been held, no charge-sheet was served and he has also not been given any retrenchment compensation/benefits to which he was entitled under the provision of Industrial Disputes Act, 1947. The Regional Manager, H.R.T.C., Parwanoo has filed a reply and they have admitted that Bachan Singh was employed as a Driver at Parwanoo Region on 1-1-1974 and that he absented himself from duty on 3-8-1974 and did not turn up on duty. It has further been contended that H.R.T.C., has suffered a loss of Rs. 6,128.70 and therefore, he could not be taken back on duty after 3-8-1974. It is further contended that in view of Bachan Singh's absence from duty and not depositing the amount in the account of the Corporation as stated above, the question of issuing notices, charge sheet or holding enquiry and paying compensation does not arise. It is also contended that Bachan Singh was a daily waged worker and was employed as a Driver and as such he is not entitled to any compensation or any notice of retrenchment.

From the averments of the parties, the following issues arose and were framed on 15-2-1981:—

1. Whether the petitioner was regularly appointed driver or as casual worker engaged on daily wages basis;
2. Whether the Petitioner was transferred from Dhalli Transport Region to Parwanoo on 1-1-1974 or he was engaged on daily wages on day to day basis in Parwanoo Region with effect from 1-1-1974?

3. Whether the petitioner was terminated from service on 3-8-1974 without any notice, charge sheet and inquiry or compensation or absented himself from duties after the accident caused by the petitioner while driving Bus No. HPS-525?
4. Whether the parties employment liabilities are governed or not under the Industrial Employment (Standing Orders) Act, 1946, if so to what effect? OPP
5. Whether the petitioner was given opportunity to make good the loss caused by the accident to extent of Rs. 6,128.78 to the respondents bus which he failed to do. If so its effect? O.P.P.
6. Relief.

FINDINGS

Issue No. 1 and 2.—The workman has produced evidence on record that he was engaged as a daily waged Driver. He has appeared as witness and made statement as PW-4. He has stated that he joined the service of the Regional Manager Dhalli on 24-2-1973. and was transferred to Parwanoo Region. He has also examined Shri Satya Parkash as PW-2 a Clerk of H.R.T.C., Dhalli Region. According to him, Bachan Singh was employed as a Driver on 24-2-1973 at Dhalli Region where he worked upto 31-12-1973. He further stated that on the creation of Parwanoo Region, Bachan Singh was employed as a Driver with effect from 1-1-1974 in that Region.

The Regional Manager has not led any evidence in support of their contention out of which the present issue has arisen. From the evidence on record, it is apparent that Bachan Singh was employed as a Driver on 24-2-1973 in Dhalli Region and he was transferred from Dhalli to Parwanoo Region on 1-1-1974. Bachan Singh claims that he was appointed on regular basis. Though he has not led any evidence that he was appointed on regular basis. From the evidence on record, I have no hesitation to conclude that Bachan Singh was employed on daily wages with effect from 24-2-1973 at Dhalli Region and therefore, he was transferred in this very capacity to Parwanoo Region where he started working with effect from 1-1-1974. I decide this issue accordingly in favour of Bachan Singh and against the management and hold that Bachan Singh was appointed as a Driver on daily wages on 24-2-1973 at Dhalli Region where he worked upto 31-12-1973. He was transferred from Dhalli to Parwanoo Region where he reported for duty on 1-1-1974.

Issue No. 3.—Bachan Singh has appeared as PW-4. From the evidence on record, I find that no notice of termination or any charge sheet has been served nor any enquiry was held against him. He has also stated that Bus accident occurred on 2-8-1974 but he reported for duty on 3-8-1974. The Headmechanic did not allow him to join duty and told him that till the criminal case was over he could not be permitted to join duty. Headmechanic has no authority or powers to suspend or remove Bachan Singh, Driver from service for any fault. Although, the Regional Manager has not led any evidence in rebuttal, and has not examined the Headmechanic it does not effect my findings on this issue. Bachan Singh could see the higher authorities, if he was not allowed to work by Headmechanic. Bachan Singh was to see the higher authorities. He has not done so and has just acted upon the desire of Headmechanic.

Bachan Singh was acquitted by the Learned Sessions Judge, Solan and Sirmour for the alleged negligence of driving on 2-8-1974 vide judgement Ex-P.A. on 23-11-1978.

Bachan Singh has further stated that no notice or charge sheet was served nor any enquiry has been conducted nor any compensation has been paid to him. He has also contended that he was never absented from duty. There is no material on record to show that any notice or charge sheet were served on Shri Bachan Singh, nor any enquiry was held against him. On the other hand there is record to show that Bachan Singh was appointed on daily waged basis on

24-2-1973 and he continued working as such upto 2-8-1974. He has thus put in more than 240 days in the employment of respondent management. He cannot be removed from service otherwise than in due process of law and according to the provisions of the Industrial Disputes Act, 1947 and Industrial Employment (Standing Orders) Act, 1946. At the time of retrenchment Bachan Singh was to be served with a notice and was entitled to the benefit of retrenchment compensation in lieu of notice as required under the provision of Industrial Disputes Act, 1947. Neither any notice has been given to him nor any payment has been made to him. This is clearly in contravention of the provisions of the Industrial Disputes Act, 1947. The removal from service of Bachan Singh by the Regional Manager is retrenchment as defined under section 2(oo) of the Industrial Disputes Act, 1947. The term retrenchment has been defined as under:—

‘Retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of employ superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health.

The Regional Manager has tried to take up the plea that Bachan Singh has not reported for duty and as such he has given up the job and as such this case is not that of retrenchment. I find no force in the contention. Bachan Singh has clearly stated as PW-4 that he reported for duty but has not been allowed to work inspite of the acquittal by the Sessions Judge, Solan and Sirmour *vide* judgement on 23-11-1978. Bachan Singh made representations for being taken on job. These representations are *ex-P.B.* dated 28-3-1980, *ex-P.C.* 7-4-1979 *ex-P.D.* 5-1-1979, *ex-P.E.* dated 4-1-1979. In spite of these representations, he has not been allowed to work as a Driver.

All these factors and evidence on record clearly shows that Bachan Singh had put in more than 240 days as a Driver with the respondent. The Regional Manager at the time of retrenchment with effect from 3-8-1974, has not served any notice or charge sheet. Nor any enquiry has been conducted against him. Although Bachan Singh, a daily waged worker, he was entitled to retrenchment benefits under section 25-F of the Industrial Disputes Act, 1947 before, his services were retrenched. As nothing of the kind has been done by the Regional Manager, the termination of services of Bachan Singh is illegal and not in accordance with the provisions of Industrial Disputes Act. This view finds support in various Supreme Court Rulings. Some of which are reported as A.I.R. 1982 S.C. 1150, A.I.R. 1982 S.C. 854, A.I.R. 1980 S.C.-1219, (1983) ILLJ-337, (1982) ILLJ-330.

It has been contended on behalf of Regional Manager that section 25-G of the Industrial Disputes Act, 1947 is attracted in the present case and thus no notice or enquiry its required. But I don't find any weight in this contention. There is no evidence on record to show that there is any agreement between Bachan Singh and Regional Manager with respect of employment. More over section 25-G does not over ride the provision of section 25-F of the said Act. Section 25-G of the said Act covers only the provisions with regard to the re-employment of retrenched workers and provides that first come last go at the time of retrenchment and also re-employment. There is no such question which calls for consideration of this provision.

In view of this consideration, I decide this issue in favour of Petitioner and against the Respondent Management and hold that Bachan Singh never absented himself from duty after the accident rather he was not permitted to join his duty inspite of his representation after the accident and his acquittal by the Learned Sessions Judge, Solan and Sirmour *vide* judgement *Ex-P.A.*; dated 23-11-1978.

Issue No. 4.—Bachan Singh is admittedly a workman. He is no doubt a daily waged worker. But he had put in more than 240 days service as a driver with the Respondent Management at the time of termination of his services. It shows that he has been retrenched but no proper notice of retrenchment nor any enquiry was held. The provisions of Industrial Disputes Act and Industrial Employment (Standing Orders) Act are attracted. This issue is accordingly decided in favour of petitioner and against the respondent management.

Issue No. 5.—Bachan Singh has categorically stated as PW-4 that no notice or charge sheet was served upon him and no enquiry has been held against him. The Respondent Management has not taken the plea that any notice was served against him nor any enquiry was held against him. Even if, he has caused a loss of Rs. 6,128.70 to the Respondent Management, he could show that he was not responsible to this loss. He was only a Driver of the Bus. In case he was driving a bus backward, it was for the Conductor of the Bus to give him signal or it might have mechanical failure or Vis Major. He could explain if the opportunity was given to him that he has not caused any loss/damage to the bus. In view of these considerations, I decide this issue in favour of petitioner and against the respondent management.

Relief.—In the result, I answer the question referred to this court in the affirmative. The termination of services by the Respondent Management is illegal and not justifiable under the provisions of the Industrial Disputes Act and Industrial Employment (Standing Orders) Act, 1946. The petitioner is entitled to be reinstated governing the terms and conditions of service under the said Act. He is entitled to all the benefits to which he was entitled as if he was not retrenched including seniority, regularisation, confirmation, pay, allowances, promotions, increments etc.

However, it is made clear that Bachan Singh is not entitled the back wages with effect from 3-8-1974 to 23-11-1978. He was acquitted on 23-11-1978 and during the period till his acquittal, he has not taken steps to resume duty. He is not entitled to any back wages. The Respondent Management is given one months time to implement this award from the date of publication in the Official Gazette.

Announced on the 20th day of November, 1983.

S. S. KANWAR,
Presiding Officer,
Labour Court, Shimla.
20-11-1983.

By order,
Sd/-
Commissioner-cum-Secretary (Labour)
to the Government of Himachal Pradesh.

PONG DAM CELL ORDER

Shimla-2, the 24th December, 1983

No. 13-6/70-Rev. Cell (Pong).—In supersession of this Department notification of even number, dated the 4th October, 1982, the Governor, Himachal Pradesh is pleased to re-constitute State Level Bhakra Project Oustees Rehabilitation Advisory Committee to advise the Government in proper rehabilitation of oustees and other matters concerned therewith, for a period of one year with immediate effect consisting of the following persons, namely:—

Non-officials

1. Chief Minister, Himachal Pradesh
2. Revenue Minister, Himachal Pradesh

.. Chairman
.. Vice-
Chairman

3. Shri N. C. Prasher, M.P.	..	Member
4. Shri D. R. Sankhyan, M.L.A.	..	-do-
5. Shri Sada Ram, M.L.A.	..	-do-
6. Shri Ganoo Ram, M.L.A.	..	-do-
7. Shri Sita Ram, ex-M.L.A.	..	-do-
8. Shri Bachhitar Singh, ex-M.L.A.	..	-do-
9. Shri K. L. Tadu, ex-M.L.A.	..	-do-
10. Shri Kuldeep Singh, ex-M.L.A.	..	-do-
11. Shri Prem Lal Gupta, Bilaspur	..	-do-
12. Shri Ram Nath Sharma	..	-do-
13. Shri Ram Rakha Sharma	..	-do-
14. Shri Nikku Ram, ex-M.L.A.	..	-do-
15. Shri Ram Lal Chauhan, Advocate, Bilaspur	..	-do-
16. Chairman, Panchayat Samiti, Sadar	..	-do-
17. Chairman, Panchayat Samiti, Geharwin	..	-do-

Officials

18. The Financial Commissioner (Rev.), Himachal Pradesh	..	-do-
19. The Secretary (Forests), Himachal Pradesh	..	-do-
20. The Secretary (P.W.D.), Himachal Pradesh		-do-
21. The Divisional Commissioner, Shimla Division	..	-do-
22. The Engineer-in-Chief, P.W.D., Himachal Pradesh	..	-do-
23. The Chief Engineer (B&R), H.P. P.W.D., Shimla	..	-do-
24. The Chief Engineer (I&PH), H.P. P.W.D., Shimla	..	-do-
25. The Chief Conservator of Forests, Himachal Pradesh	..	-do-
26. The Deputy Commissioner, Bilaspur (Himachal Pradesh)	..	-do-
27. The Chief Engineer (Operation), Himachal Pradesh S.E.B., Shimla	..	-do-
28. The Deputy Secretary (Revenue), Himachal Pradesh	..	Member-Secretary.

2. The official members will be entitled to travelling allowance and daily allowance according to the rules governing them.

3. The non-official members of the Committee will be entitled to draw travelling and daily allowances as per annexure in respect of the journeys etc. that may be performed in connection with the work assigned to the Committee.

4. The Deputy/Under Secretary (GAD), Himachal Pradesh Government will be controlling officer in respect of the countersigning of the travelling allowance bills of the non-official members and the T.A. Bills also be prepared in the accounts section of the Himachal Pradesh Secretariat.

5. The expenditure on T.A. and D.A. etc. of the non-official members in connection with the meeting of the Committee will be debitable to Head "252—Sectt. Services (a) Secretary (a) (i) Chief Secretary—Travel expenses."

6. This issues with the prior concurrence of the Finance Department obtained vide their U.O. No. 2266-Fin(C)A(9)-13/76-II, dated 5-12-1983.

ANNEXURE

T.A. AND D.A. TO NON-OFFICIAL MEMBERS OF THE COMMITTEE

I. TRAVELLING ALLOWANCE:

(i) *Journey by Rail.*—(a) *Members of Parliament.*—A member of Parliament serving on the Advisory Committee will utilize the free first class pass issued to him as M.P. in respect of all journeys undertaken by him on the business of the Advisory Committee. He will not travel by air-conditioned accommodation at Government expense. If such a member travels by air conditioned coach he will pay the difference between the fare for the air conditioned and first class accommodation from his own pocket

(b) *Other than Members of Parliament.*—They will be treated at par with Government servants of the first grade, and will be entitled to actual rail fare of the class of accommodation actually used but not exceeding the fare in which the Government servants of the first grade are normally entitled, i.e., accommodation of the highest class by whatever name it may be called provided in the railway by which the journey is performed.

(ii) *Journey by Road.*—They will be entitled to actual fare for travelling by taking single seat in a public bus, and if the journey is performed by motor cycle/scooter, mileage allowance at 50 paise per km. for plain areas and 65 paise for hilly areas if the journey is performed by own car or full taxi, the members will be entitled to mileage allowance at Rs. 1.65 paise per km. in respect of the journeys for hilly areas and in the plain Rs. 2.00 per km. in the hills and for journeys for hilly areas.

(iii) In addition to the actual fare or mileage as per item (i) and (ii) above, a member shall draw daily allowance for the entire absence from the permanent place of residence starting with arrival at that place, at the same rate and subject to the same terms and conditions as apply to Grade-I Officers of the State Government.

2. DAILY ALLOWANCE:

(i) Non-official members be entitled to draw daily allowance for each day of the meeting at the highest rate as admissible to a Government servant of the first grade for the respective locality.

(ii) In addition to daily allowance for the day(s) of the meeting, a member shall also be entitled to daily allowance for halt on tour at out-station in connection with the affairs of the Committee as under:—

- | | |
|---|-------|
| (a) if the absence from headquarters does not exceed 6 hours | Nil |
| (b) if the absence from headquarters exceeds 6 hours but does not exceed 12 hours | 70% |
| (c) if the absence from headquarters exceeds 12 hours | Full. |

3. CONVEYANCE ALLOWANCE:

A member resident at a place where the meeting of the Committee is held will not be entitled to travelling and daily allowance on the scales indicated above, but will be allowed only the actual cost of conveyance hire, subject to a maximum of Rs. 10.00 per day. Before the claim is actually paid for controlling officer should verify the claims and satisfy himself after obtaining such details as may be considered necessary, that the actual expenditure was not less than the amount claimed.

If such a member used his own car, he will be granted mileage allowance, at the rates admissible to officials of the first grade subject to a maximum of Rs. 10.00 per day.

4. The travelling and daily allowance will be admissible to members on production of a certificate by him to the effect that he has not drawn any-travelling or daily allowance for the same journey and halts from any other Government source.

5. The members will be eligible for travelling allowance for the journey actually performed in connection with the meetings of the Committee from and to the place of their permanent residence to attend a meeting of the Committee or return to the place other than the place of his permanent residence after the termination of the meeting, travelling allowance shall be worked out on the basis of the distance actually travelled or the distance between the place of permanent residence and the venue of the meeting whichever is less.

MEMBERS OF PARLIAMENT

6. The Member of the Parliament on the Advisory Committee in respect of journey performed by him by rail, road, air and steamer in connection with the work of Committee, shall be entitled to T.A./D.A. on the same scale as is admissible to him under 'Salaries and Allowances of Members of Parliament' as amended from time to time.

MEMBERS OF VIDHAN SABHA

7. The non-official members who are members of the Vidhan Sabha shall be entitled to T.A./D.A. in respect of journeys performed in connection with the work of the Committee on the scale as is admissible to them under Salaries and Allowances of Members of Legislative Assembly.

8. The members will not be entitled to daily allowance in connection with their assignment when the Vidhan Sabha or the Vidhan Sabha Committee on which the members are serving is in Session as they will be drawing their daily allowance under the Salaries and Allowances of Members of the Legislative Assembly (Himachal Pradesh) Act, 1971, from the Vidhan Sabha. However, if they certify that they were prevented from attending the session of the House or the Vidhan Sabha Committee and did not draw any daily allowance from the Vidhan Sabha, they would be entitled to daily allowance at the rate as prescribed.

9. The provision of rules 4.17 and 6.1 of the Himachal Pradesh Treasury Rules will apply *mutatis mutandis* in the case of over payment made on account of travelling allowance to non-official members.

10. The members will also not draw T.A. and D.A. including conveyance allowance which will disqualify them from the Vidhan Sabha.

OFFICIAL MEMBERS

11. The official members shall be entitled to the travelling and daily allowance admissible to them according to the rules governing them.

By order,
ATTAR SINGH,
Secretary.

